

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 97-3815

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United States of America,

Appellee,

v.

Gerald D. James,

Appellant.

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Appeal from the United States  
District Court for the  
District of Nebraska.

[UNPUBLISHED]

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Submitted: March 31, 1999

Filed: April 6, 1999

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Before RICHARD S. ARNOLD, WOLLMAN, and BEAM, Circuit Judges.

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PER CURIAM.

Gerald D. James appeals his convictions and resulting sentence in the district court<sup>1</sup> after a jury trial on charges of conspiring to distribute methamphetamine and cocaine. We affirm.

James argues the district court plainly erred by failing sua sponte to declare a mistrial in response to comments the government made in its closing argument

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<sup>1</sup>The Honorable Richard G. Kopf, United States District Judge for the District of Nebraska.

regarding the guilty pleas of several government witnesses. However, we do not believe the jury's verdict could reasonably have been affected by the prosecutor's comments, especially given that both the government and the court cautioned the jurors against inferring James's guilt from the guilty pleas of his coconspirators. See United States v. Johnson, 968 F.2d 768, 769-70 (8th Cir. 1992). James also argues the district court erred in refusing to depart downward under U.S. Sentencing Guidelines Manual § 5H1.4 (1998) based on his physical condition, but the court's decision was discretionary, and thus unreviewable on appeal. See United States v. Saelee, 123 F.3d 1024, 1025 (8th Cir. 1997).

Accordingly, we affirm.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.